

(Slip Opinion)

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)	
)	
Ashland Oil, Inc.)	SPCC Appeal No. 91-1
Floreffé, PA)	
)	
Docket No. PA-88-0001)	

[Decided September 15, 1992]

FINAL DECISION

*Before Environmental Appeals Judges Nancy B. Firestone
and Ronald L. McCallum.*

Ashland argues that §112.7 contains guidelines, not requirements, and therefore there is no requirement that an SPCC Plan be "carefully thought-out." Even if an SPCC Plan is required to be "carefully thought-out," Ashland asserts that its SPCC Plan met this requirement because it provides for adequate containment and therefore need not disclose the location of above and underground storage tanks. Furthermore, Ashland argues that the Region failed to meet its burden of proof on this issue because the inspector admitted that he did not question the draftsman of the plan, who testified in detail about his thought process in making the SPCC Plan.

Ashland's argument focuses on the meaning of the "carefully thought-out" language in the introductory paragraph of §112.7, which provides that an SPCC Plan "shall be a carefully thought-out plan." (Emphasis added.) The use of the word "shall" indicates that "carefully thought-out" is a requirement, and not merely a suggestion as Ashland would have us believe. Although §112.7 is entitled "Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan," such guidelines are contained in the lettered paragraphs of §112.7, and not in the introductory paragraph of the regulation where the "carefully thought-out" requirement is found.¹⁴ The guidelines in the lettered paragraphs are designed to allow each facility to prepare an SPCC Plan suitable to its particular design and operation. While each guideline may not be mandatory in every case, given the differences among facilities, every SPCC Plan must still satisfy the "carefully thought-out" requirement.

Neither the regulations nor previous SPCC decisions by the Administrator define the "carefully thought-out" requirement. In the absence of any guidance from these sources, we interpret this requirement in light of the purposes of the SPCC regulations. The SPCC regulations were promulgated pursuant to §311(j)(1)(C) of the CWA. See 38 Fed. Reg. 14,334 (Jul. 19, 1973). Section 311(j)(1)(C)

¹⁴ The last sentence of the introductory paragraph of §112.7 provides that a "complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed." The guidelines are then listed in the following lettered paragraphs. The guidelines in the lettered paragraphs use the non-mandatory "should," whereas the introductory paragraph uses the imperative "shall." See 38 Fed. Reg. 34,164 (Dec. 11, 1973).